

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to D.C. Official Code § 47-2851.20 (2005 Repl.), hereby gives notice of the adoption of amendments to Title 16, Chapter 4 (Towing Service for Motor Vehicles) of the District of Columbia Municipal Regulations (DCMR). This rulemaking adds a new section 405.8 to establish new regulations for the outdoor storage of towed motor vehicles.

This final rulemaking is intended to prevent motor vehicle towing lots in the District of Columbia from being operated or maintained in a manner that endangers or inconveniences patrons, detracts from the attractiveness of the surrounding area for retail or residential use, or threatens harm to the environment.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on March 6, 2009 (56 DCR 2006). No comments were received in response to that notice and no changes have been made to the rulemaking.

This Notice of Final Rulemaking supersedes the emergency rulemaking adopted on March 2, 2009, and the final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 16, Chapter 4 of the DCMR is amended to add new section 405.8 to read as follows:

405.8 If used to store vehicles outside of a permanent garage or permanent building, a towing service storage lot shall comply with the following additional requirements:

- (a) The storage lot shall be used exclusively for:
 - (1) Storing towed vehicles following public tows or tows for customers;
 - (2) Parking vehicles used by customers, employees, visitors, or other persons, to travel to and from the storage lot; and
 - (3) Parking tow trucks and any other vehicles regularly used by the towing business for the purpose of transporting passengers, vehicles, or equipment;
- (b) The storage lot shall not be used to store a towed vehicle for more than sixty (60) days, unless the vehicle is being stored as a result of a public tow;
- (c) The storage lot shall be served by an office, located on the storage lot or on an adjoining lot, that has heating, electricity, and a bathroom;

- (d) The storage lot shall maintain a permanent sign, visible from the lot entrance, showing the name of the establishment and its hours of operation;
- (e) Each automobile space in the storage lot shall have space boundaries that are clearly marked with painted lines;
- (f) The storage lot shall be separated by fencing from any adjoining outdoor space not used as a towing service storage lot, whether or not such adjoining outdoor space is owned by the storage lot owner;
- (g) Any adjoining public space, or adjoining private space not owned by the storage lot owner, shall be protected from vehicular encroachment by curbs, guard rails, or fencing, that prevent vehicles on the storage lot from protruding into the adjoining space;
- (h) The areas of the storage lot used for storing, parking, or moving vehicles shall be paved and maintained;
- (i) If the storage lot is used to store five (5) or more towed vehicles and is not located in a C-M or M zoning district, then the areas of the storage lot used for storing vehicles, or the entire storage lot, shall be screened on all sides
 - (1) by a solid, permanent, opaque fence, or a solid brick or stone wall, at least seventy-two (72) inches high and maintained, or
 - (2) by evergreen hedges or evergreen growing trees that are thickly planted and maintained and that are at least seventy-two (72) inches in height when planted;
- (j) If the storage lot is located in a C-M or M zoning district on a lot that, as shown by the records of the Surveyor of the District of Columbia, abuts a Residence District or abuts a street or alley containing a zone district boundary for a Residence District, then the storage lot shall be screened from the Residence District
 - (1) by a solid, permanent, opaque fence, or a solid brick or stone wall, at least seventy-two (72) inches high and maintained, or
 - (2) by evergreen hedges or evergreen growing trees that are thickly planted and maintained and that are at least seventy-two (72) inches in height when planted; and

- (k) No vehicle parts or trash shall be stored outdoors on the storage lot, unless stored off the ground in secured containers.

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The Director of the Department of Consumer and Regulatory Affairs, pursuant to D.C. Official Code § 47-2851.20 (2005 Repl.), hereby gives notice of the adoption of amendments to Title 16, Chapter 6 (Repair of Consumer Goods) of the District of Columbia Municipal Regulations (DCMR). This rulemaking adds a new section 652 to establish new regulations for the repair of motor vehicles.

This final rulemaking is intended to prevent consumer goods repair dealers in the District of Columbia from engaging in outdoor repair or storage of motor vehicles that detracts from the attractiveness of the surrounding area for retail or residential use, or that threatens harm to the environment.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on March 6, 2009 (56 DCR 2009). No comments were received in response to that notice and no changes have been made to the rulemaking.

This Notice of Final Rulemaking supersedes the emergency rulemaking adopted on March 2, 2009, and the final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 16, Chapter 6 of the DCMR is amended to add new section 652 to read as follows:

652 OUTDOOR REPAIR AND STORAGE OF MOTOR VEHICLES

652.1 No repair services by a consumer goods repair dealer involving motor vehicles may be performed outside of a permanent garage or other permanent building, located on premises for which the dealer has a license to perform repair services on motor vehicles, except that the dealer may perform outdoors:

- (a) Within the boundaries of the dealer's licensed premises, minor motor vehicle repair services limited to replacing batteries, changing tires, changing light bulbs or air filters, adding washer fluid or motor oil, and other comparably minor services, but excluding oil changes or any other services involving the removal of motor vehicle fluids; or
- (b) On disabled motor vehicles, emergency road services limited to jump-starting engines, replacing batteries, changing tires, and other comparably minor emergency services.

652.2 The phrase "outdoor storage of motor vehicles" in Title 16, Section 314, excludes parking, at the licensed premises of a consumer goods repair dealer licensed to perform repair services on motor vehicles, of the following types of motor vehicles:

- (a) Customers' motor vehicles kept on the premises for the purpose of having repair services performed on the vehicles by the dealer;
- (b) Motor vehicles used by customers, employees, visitors, and other persons, to travel to and from the premises;
- (c) Operational motor vehicles that are owned by or leased to the dealer and that are kept and regularly used by the dealer for the purpose of transporting passengers, vehicles, supplies, or equipment.

652.3 To assist the Director in monitoring compliance with this section and with Title 16, Section 314, a consumer goods repair dealer shall maintain in a secure location on the dealer's premises, for each motor vehicle kept on the premises that belongs to a customer, a record showing the customer's name, address, and telephone number, the date the vehicle was received by the dealer, and the type or types of repair services that have been, are being, or are to be performed on the vehicle by the dealer, and shall make such record available for immediate inspection by the Director at any time during regular business hours.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to D.C. Official Code §§ 47-2828, 47-2851.03a(o), and 47-2851.20, hereby gives notice of the adoption of amendments to Title 16, Chapter 8 (Home Improvements) of the District of Columbia Municipal Regulations (DCMR). This rulemaking is necessary to clarify the provisions, update the bond requirements of home improvement contractors, require home improvement contractors to maintain a list of all permitted work projects, require home improvement contractors to include their business license number on advertisements, update the service of process and appeals provisions, amend the definitions of “home improvement contract”, “home improvement work”, and “residential property”, and make technical corrections of legal citations.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 17, 2008 (55 DCR 10954). No comments were received in response to that notice and no changes have been made to the rulemaking. The final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 16, Chapter 8 of the DCMR is amended as follows:**Section 800.1 is amended to read as follows:**

- 800.1 No person shall require or accept any payment for a home improvement contract to be undertaken in the District in advance of the full completion of all work required to be performed under the contract, unless that person is licensed as a home improvement contractor or as a licensed salesperson employed by a licensed contractor in accordance with the provisions of this chapter.

Section 800.6 is amended to read as follows:

- 800.6 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this chapter pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this chapter shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

Section 802.1 is amended to read as follows:

- 802.1 Each applicant for a contractor's license shall file in the Office of the Director a bond issued in support of the license for which application is made, extending to third-party recovery, in the penal sum of twenty-five thousand dollars (\$ 25,000) running to the District of Columbia, with corporate surety authorized by the Commissioner of the Department of Insurance, Securities, and Banking to do business in the District.

Section 802.5 is amended to read as follows:

- 802.5 The security which may be accepted by the D.C. Treasurer under § 802.4 shall be one of the following:
- (a) Cash in the amount of twenty-five thousand dollars (\$ 25,000);
 - (b) A certified check or cashier's check in the amount of twenty-five thousand dollars (\$ 25,000) made payable to the order to the D.C. Treasurer; or
 - (c) A marketable bond or bonds or a note or notes having in the aggregate a maturity value of at least twenty-six thousand dollars (\$ 26,000) and issued by the government of the United States or by any agency or instrumentality of the government, together with an irrevocable power of attorney and agreement, on a form provided by the D.C. Treasurer authorizing the D.C. Treasurer to collect or sell, assign, and transfer that bond or note; Provided, that no such bond or note shall be collected or sold until such time as it may be necessary to make payment to any person entitled to recover damage from the security which the bond represents.

Section 802.8 is amended to read as follows:

- 802.8 If the security deposited pursuant to this section is other than bonds or notes and is reduced below twenty-five thousand dollars (\$ 25,000), or if the security is in the form of marketable bonds or notes and, by reason of the payment of or on account of any final judgment, is reduced to an amount less than twenty-six thousand dollars (\$ 26,000), the licensee shall, within five (5) calendar days after having been notified in writing by the Director to do so, make an additional deposit to bring the amount on deposit with the D.C. Treasurer for the purpose of this subsection up to the amount required under the appropriate provision of this section.

Section 807.1 is amended to read as follows:

- 807.1 Notwithstanding the applicable provisions of regulations governing refrigeration and air conditioning licensing and electrical licensing and bonding, and plumbing, but subject to the provisions of this section, a home improvement contractor licensed under the authority of this chapter may advertise in any manner and may state orally to a prospective customer that any contract between the customer and the contractor may provide for the performance of electrical, plumbing, gasfitting, or refrigeration and air conditioning work, or any combination of those services. In any advertisement, the licensee shall include his or her license number.

A new section 807.3 is added to read as follows:

- 807.3 A licensee shall maintain a list that includes information about all permits obtained and all contractors or subcontractors performing work on any project permitted or requiring a permit under this chapter. Such list shall include the contractor or subcontractor's name and address and, if applicable, their license number. If requested by the Director, the licensee shall produce this list within forty-eight (48) hours of the Director's request.

Section 814.5 is amended to read as follows:

- 814.5 The notice shall be personally served upon the applicant or licensee, or otherwise served by one of the following methods:
- (a) Served personally upon the applicant or licensee, or the applicant or licensee's agent; or
 - (b) Sent by first class mail to the home or business address of the applicant or licensee, or the applicant or licensee's agent, appearing on the application or license.

A new section 814.6 is added to read as follows:

- 814.6 A notice that is returned by the post office for reason of refusal of service of the addressee to accept delivery, or incorrect address, is deemed to have been properly served on the addressee by mail.

A new section 814.7 is added to read as follows:

- 814.7 An applicant or licensee may not file a separate application for licensure under this chapter during the appeal process.

Section 815.1 is amended to read as follows:

- 815.1 Any licensee on whom a notice has been served pursuant to § 814 may file a written notice of appeal with the Office of Administrative Hearings (OAH).

Section 815.2 is amended to read as follows:

- 815.2 All hearings and appeals shall be conducted pursuant to the regulations promulgated by OAH. Any stay of an OAH decision that results in the revocation of a license shall be issued pursuant to the procedures set forth by OAH.

Section 899 is amended as follows:

The definition of "home improvement contract" is amended to read as follows:

Home improvement contract - an agreement for the performance of home improvement work in the District for a contract price of three hundred dollars (\$ 300)

or more. This term shall also include the second or any subsequent agreements entered into between the same contractor and the same homeowner within any twelve (12) month period, if the total of the contract prices of all the agreements aggregate three hundred dollars (\$ 300) or more.

The definition of “home improvement work” is amended to read as follows:

Home improvement work – means the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a residential property, or a structure adjacent to the residential property, including a driveway, fence, garage, porch, deck, or swimming pool. Any construction work outside the scope of “home improvement work” shall be considered either general contracting or construction management, as those terms are defined in Title 17 of the District of Columbia Municipal Regulations, Chapter 39.

The term “home improvement work” does not include:

- 1) construction of a new building to be used as a residential property;
- 2) the sale or installation of any appliance, materials, household furnishings, or equipment, if not made a part of the realty;
- 3) work performed by licensed electricians, plumbers and gasfitters, or refrigeration and air conditioning mechanics, so long as the work performed by them is limited to that of their licensed occupation; or
- 4) work performed by a homeowner on his or her own residential property.

The term “residential property” is amended to read as follows:

Residential property - real property or interest in real property consisting of a single-family dwelling or two-family dwelling (flat), including an individual apartment unit in a condominium or cooperative apartment building, together with any structure or grounds appurtenant to the single-family or two-family dwelling.

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The Director of the Department of Consumer and Regulatory Affairs, pursuant to D.C. Official Code §§ 47-2846 and 47-2851.20, hereby gives notice of the adoption of amendments to Title 16, Chapter 33 (Department of Consumer & Regulatory Affairs (DCRA) Infractions) of the District of Columbia Municipal Regulations (DCMR). This rulemaking is necessary to add violations of two new license endorsement categories to the Business and Professional Licensing Administration Infractions and make conforming changes.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 17, 2008 (55 DCR 10958). No comments were received in response to that notice and no changes have been made to the rulemaking. The final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 16, Chapter 33 of the DCMR is amended as follows:**Section 3301.1(hh) is amended to read as follows:**

(hh) Section 6 of the Security and Fire Alarm Systems Regulation Act of 1980, effective Sept. 26, 1980 (D.C. Law 3-107; D.C. Official Code § 7-2805) (operating an alarm dealer and agent business without a license endorsement);

Section 3301.1(ii) is amended to read as follows:

(ii) Section 4 of An Act To provide full and fair disclosure of the character of charitable, benevolent, patriotic, or other solicitations in the District of Columbia, approved July 10, 1957 (71 Stat. 279; D.C. Official Code § 44-1703(a)) (engaging in the conduct of charitable solicitation without a certificate of registration);

Section 3301.1 is amended to add two new subsections to read as follows:

(jj) D.C. Official Code § 47-2851.03d(a) (operating a business without a general business license endorsement); or

(kk) D.C. Official Code § 47-2851.03d(b) (operating a general contracting or construction management business without a general contractor/construction manager license endorsement).

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The Director of the Department of Consumer and Regulatory Affairs, pursuant to D.C. Official Code § 47-2851.20, hereby gives notice of the adoption of a new Chapter 39 (General Contractor/Construction Manager) to Title 17 of the District of Columbia Municipal Regulations (DCMR). This rulemaking adds a new chapter 39 to create a new basic business license endorsement category for individuals or businesses engaged in general contracting or construction management.

The creation of this new license category was authorized by the Fiscal Year 2009 Budget Support Act of 2008, D.C. Law 17-219, effective August 16, 2008.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 17, 2008 (55 DCR 10963). Two comments were received in response to that notice, but no changes have been made to the rulemaking. The final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 17, Chapter 39 of the DCMR is added to read as follows:

CHAPTER 39 GENERAL CONTRACTOR/CONSTRUCTION MANAGER

Secs.	
3900	General Provisions
3901	Licensing of General Contractor/Construction Manager
3902	Insurance
3903	Examination of Records
3904	Advertising and Records
3905	Contracts
3906	Receipts
3907	Permits
3908	Denial, Suspension, or Revocation of License
3909	Penalties
3910	Notice of Proposed Action and Appeal Rights
3911	Hearings and Appeal
3999	Definitions

3900. GENERAL PROVISIONS

- 3900.1 Each person engaged in general contracting or construction management in the District shall apply to the Department of Consumer and Regulatory Affairs (Department) for a basic business license with a General Contractor/Construction Manager endorsement (license).

- 3900.2 A licensee shall conspicuously post the license on the premises indicated on the license, which shall be available for inspection by any duly authorized government official. A photocopy of the license shall be posted in a conspicuous place at each construction site maintained by the licensee.
- 3900.3 A licensee shall obtain any other basic business license and endorsements as required by District statute or regulation.
- 3900.4 No licensed General Contractor/Construction Manager shall hold himself or herself out or engage in business as a General Contractor/Construction Manager under any name other than the name appearing on his or her license; Provided, that nothing in this subsection shall prevent the use of a trade name if the name is contained in the license application and approved by the Director of the Department of Consumer and Regulatory Affairs (Director).
- 3900.5 No person shall include in any contract relating to general contracting or construction management work any provision waiving or purporting to waive any provision of this chapter. Any provision included in a contract which waives or purports to waive any provision of this chapter shall be void and of no effect.
- 3900.6 A license issued under this chapter is not transferable.
- 3900.7 A person who obtains a license under this chapter shall not be required to obtain a home improvement contractor license to engage in home improvement work, as that term is defined in 16 DCMR § 899.1; Provided, that the person engaging in such work complies with the requirements of 16 DCMR §§ 808, 810, and 811.

3901. LICENSING OF GENERAL CONTRACTOR/CONSTRUCTION MANAGER

- 3901.1 Application for a license issued under this chapter shall be made to the Director on a form prescribed by the Director.
- 3901.2 Licenses shall be of the following five (5) classes:
- (a) Class A – The holder of a Class A license is subject to no limitation as to the value of any single contract project.
 - (b) Class B – The holder of a Class B license is not entitled to engage in the construction of any single contract project of a value in excess of ten million dollars (\$10,000,000).
 - (c) Class C – The holder of a Class C license is not entitled to engage in the construction of any single contract project of a value in excess of five million dollars (\$5,000,000).
 - (d) Class D – The holder of a Class D license is not entitled to engage in the construction of any single contract project of a value in excess of two million dollars (\$2,000,000).
 - (e) Class E - The holder of a Class E license is not entitled to engage in the construction of any single contract project of a value in excess of five hundred thousand dollars (\$500,000).

- 3901.3 Each application shall be signed by the owner or authorized representative of each business and shall correctly set forth the information required on the application form.
- 3901.4 Each application shall list all jurisdictions where the applicant is licensed to engage in the business of general contracting or construction management and if any disciplinary actions have been taken against the applicant in any other jurisdiction. This includes any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in any jurisdiction.
- 3901.5 Each application shall include a credit report from a credit reporting agency that is subject to oversight by the Federal Trade Commission and a statement of all outstanding judgments against the applicant.
- 3901.6 The credit report required by § 3901.5 shall be submitted by:
- (a) The business; and
 - (b) Any principal officers of the business and any person owning, directly or indirectly, twenty-five percent (25%) or more of the interest in the business; or
 - (c) Any sole proprietor.
- 3901.7 Any false statement contained in the application for license shall be grounds for the denial, suspension, or revocation of that license by the Director.
- 3901.8 Each license shall be valid for two (2) years.
- 3901.9 A licensee shall notify the Department of any change of address within thirty (30) days of the change.
- 3901.10 No license shall be issued to any applicant whose license under this chapter has been revoked for cause at any time within the last four (4) years. For any applicant other than a natural person, this provision shall apply to every principal officer and to any person owning, directly or indirectly, twenty-five percent (25%) or more of the interest in the applicant.
- 3901.11 A licensee shall notify the Department of any disciplinary action (as described in § 3901.4) taken against the licensee in any jurisdiction the licensee is licensed to engage in the business of general contracting or construction management within thirty (30) days of such action.
- 3901.12 All qualifications set forth in this chapter as prerequisite to the issuance of a license shall be maintained for the entire license period. Failure to maintain any qualification for license shall be cause for suspension or revocation of the license.
- 3901.13 The license number, and the class of license obtained, shall appear on every application for a building permit.

3902. INSURANCE

- 3902.1 Prior to the issuance of a license, each applicant shall furnish to the Director a certificate of insurance, issued by an insurer authorized to insure in the District with a credit rating of B+ or higher by A.M. Best Company, evidencing commercial general liability insurance as follows:
- (a) If the applicant is applying for a Class A license: limits of at least two and a half million dollars (\$2,500,000) per occurrence (primary or umbrella) for bodily injury and property damage arising in any way from the issuance of the license;
 - (b) If the applicant is applying for a Class B license: limits of at least one and a half million dollars (\$1,500,000) per occurrence (primary or umbrella) for bodily injury or property damage arising in any way from the issuance of the license;
 - (c) If the applicant is applying for a Class C license: limits of at least five hundred thousand dollars (\$500,000) per occurrence, one million dollars (\$1,000,000) in the aggregate combined single limit, for bodily injury or property damage arising in any way from the issuance of the license;
 - (d) If the applicant is applying for a Class D license: limits of at least five hundred thousand dollars (\$500,000) per occurrence, one million dollars (\$1,000,000) in the aggregate combined single limit, for bodily injury or property damage arising in any way from the issuance of the license; and
 - (e) If the applicant is applying for a Class E license: limits of at least five hundred thousand dollars (\$500,000) per occurrence for bodily injury or property damage arising in any way from the issuance of the license.
- 3902.2 Each insurance policy required under this chapter shall include a provision requiring thirty (30) days advance notice to the Director prior to cancellation or lapse of the policy. The licensee shall maintain the insurance required under this chapter in full force and effect for the duration of the license period.
- 3902.3 A single violation of this section shall be grounds for the Director to suspend or revoke the license.
- 3902.4 Each insurance policy required by this chapter shall name the District of Columbia Treasurer as an additional insured on a primary, non-contributory basis.

3903. EXAMINATION OF RECORDS

- 3903.1 The Director is authorized, in connection with the consideration of license applications and from time to time during the license period, during regular business hours, to require any applicant or licensee to make available to the Director such information as the Director considers necessary in determining or verifying whether the applicant or licensee has or retains the qualifications necessary for obtaining or retaining a license, or has violated or failed to comply with any provision of statute or regulation relating to the conduct of the licensed business or to obtaining or retaining a license.

- 3903.2 Failure to make information available to the Director; failure to furnish to the Director the information the Director is authorized to request by this section; or failure to furnish to the Director or to permit the Director to make one (1) or more copies of such records maintained by the applicant or licensee as the Director may specify, shall be grounds for denial, suspension, or revocation of a license.
- 3903.3 The information required by this section to be furnished to the Director may, at the option of the applicant or licensee, be furnished to the Director at the Director's office or, upon notice to the Director, at the place of business of the applicant or licensee.

3904. ADVERTISING AND RECORDS

- 3904.1 In any advertisement, the licensee shall include his or her license number.
- 3904.2 All plumbing, gasfitting, electrical, or refrigeration and air conditioning work, or any combination of those services, to be performed under any contract between a property owner and a licensee, shall be performed in accordance with all of the requirements of the regulations applicable to that work, with particular reference to the use of qualified personnel (whenever required by the applicable regulations) in securing the permits and in the performance of the work.
- 3904.3 A licensee shall maintain a list that includes information about all permits obtained and all contractors or subcontractors performing work on any project permitted or requiring a permit under this chapter. Such list shall include the contractor or subcontractor's name and address, and if applicable, their license number. If requested by the Director, the licensee shall produce this list within forty-eight (48) hours of the Director's request.

3905. CONTRACTS

- 3905.1 A licensee shall print his or her license number legibly on the front page of every estimate, contract, and subcontract.
- 3905.2 No licensee, or any agent for the licensee, shall accept any payment for general contracting or construction management work to be performed for a property owner until after the understanding between the property owner and the licensee, or the licensee's agent, with respect to the work, has been reduced to writing in accordance with the provisions of this section.
- 3905.3 The contract shall be signed by the property owner and, as the case may be, either by the licensee, or other agent for the licensee subject to the licensee's approval.
- 3905.4 If the contract contains a provision that the contract shall not be binding until accepted by the licensee, the licensee shall within fifteen (15) days after the contract has been executed by the property owner, unless a later date is agreed upon between the licensee and the property owner, in writing, give the property owner written notice of acceptance or rejection.

- 3905.5 Notice of acceptance or rejection under § 3905.4 shall be delivered to the property owner personally, by first class mail, or by electronic mail.
- 3905.6 In case of rejection, any payment made by the property owner for any services that have not been rendered by the licensee shall be returned to the property owner with the notice of rejection.
- 3905.7 Each contract for general contracting or construction management work shall bear the licensee's name, address, telephone number, and license number.
- 3905.8 Each contract shall include a description of the terms of payment, the approximate date on which the work required by the contract is to start, and the approximate date on which the work will be completed, such starting and completion dates to be subject to change at the time the contract is accepted by the licensee and at no other time (except by written agreement between the property owner and the licensee), with notice of any such change to be set forth in the written notice of acceptance of the contract furnished to the property owner by the licensee.
- 3905.9 A contract may include a provision to the effect that the licensee shall not be liable for delays due to unforeseeable causes beyond the control of and without the fault or negligence of the licensee, including acts of God, or the public enemy, or of the property owner, fires, floods, strikes, freight embargoes, or unusually severe weather.
- 3905.10 A set of specifications shall be made part of the contract, either by inclusion in the contract or by being incorporated in the contract by reference, showing the work to be done and the materials to be used.
- 3905.11 There shall be no change in specifications without the written approval of the property owner.
- 3905.12 No licensee shall cause or permit any contract or other document relating to the performance of general contracting or construction management work to be signed by the property owner before all blank spaces are filled in with easily legible writing and the licensee has submitted to the property owner the completed contract or other document and given the property owner a reasonable opportunity to examine it.
- 3905.13 Each contract shall contain a notice in bold type no smaller than ten (10) point stating in substance that the property owner shall not sign the contract in blank and that the property owner is entitled to a copy of the contract at the time he or she signs.
- 3905.14 If the property owner has a prior existing unpaid account balance with the licensee which arose in the regular course of business and which is to be consolidated with the unpaid balance for the performance of general contracting or construction management work, then, as a separate transaction, the licensee may, within fifteen (15) days subsequent to the time the contract is signed by the property owner and not less than twenty-four (24) hours prior to commencing performance of the work, furnish the property owner with a written statement setting forth the consolidated balance due the licensee and the terms of payment.

3906. RECEIPTS

- 3906.1 Prior to the completion of the contracted work, a licensee that accepts any payment for the work shall promptly deliver to the property owner a receipt for that payment.
- 3906.2 If payment is made by check or U.S. Postal money order, no receipt need be delivered to the property owner.

3907. PERMITS

- 3907.1 Each licensee entering into a contract for the performance of any construction work for which a permit is required by applicable District law or regulation shall be responsible for taking such action as may be necessary to ensure that the work is performed only under the authority of the required permit and in accordance with all of its terms.

3908. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

- 3908.1 The Director may refuse to issue or renew, or may suspend or revoke, a license issued under this chapter for any reason set forth in this chapter or D.C. Official Code § 47-2844.
- 3908.2 All qualifications set forth in this chapter as prerequisite to the issuance of any license shall be maintained for the entire license period. Failure to maintain any qualification for a license shall be cause for suspension or revocation of the license.
- 3908.3 If the Director determines that a licensee is engaging in or has engaged in a pattern of substantial code violations, the Director may order a temporary suspension of any license issued pursuant to this chapter for a period not to exceed ten (10) days. Notice of the temporary suspension and the grounds for that suspension shall be immediately sent or delivered to the licensee at the address listed on the licensee's application. The licensee shall have an opportunity for a hearing before the Director prior to the expiration of the ten (10) day temporary suspension. If the Director determines by a preponderance of the evidence that a pattern of substantial code violations exists, the Director may suspend the licensee's license for a longer period of time or revoke the license.
- 3908.4 The grounds for denial, suspension, or revocation of a license include the following:
- (a) Material misstatement in application for license;
 - (b) Failure or refusal to comply with any provision of statute or regulation governing the carrying on of the general contracting or construction management work;
 - (c) Conviction of false pretenses, larceny after trust, embezzlement, or any other offense involving fraudulent conduct, arising out of or based on a general contracting or construction management contract;

- (d) Misrepresentation or concealment, through any subterfuge or device, or any matter required by this chapter to be stated to the property owner or of the nature of any matter required by this chapter to be furnished to the property owner;
- (e) Employment of any fraudulent or misleading device, method, or practice in connection with the negotiation or performance of a contract for general contracting or construction management;
- (f) Use of advertising with regard to contracting for or performing general contracting or construction management work which is misleading or deceptive by reason of any false statement contained in that advertising or which, by reason of incompleteness or otherwise, may mislead or deceive;
- (g) Willful or fraudulent circumvention of any provision of statute or regulations relating to the conduct of the licensed business;
- (i) The unjustified failure or refusal of a licensee to substantially complete the work required by a contract within a reasonable time after the approximate date of completion specified in the contract; and
- (j) Working beyond the scope of the class of license issued under § 3901.2.

3908.5 Any advertising conforming with the then-current regulations, rules, or guides of the Federal Trade Commission shall not be deemed to be misleading or deceptive under § 3908.4(f).

3909. PENALTIES

3909.1 Each licensee shall be liable for all penalties provided for violation of any of the provisions of this chapter, whether the violations are committed by the licensee or the licensee's agent or employee.

3909.2 Pursuant to D.C. Official Code § 47-2846, any person violating any provision of this chapter shall, upon conviction, be fined not more than three hundred dollars (\$300) or imprisoned for not more than ninety (90) days, or both.

3909.3 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this regulation pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this regulation shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

3910. NOTICE OF PROPOSED ACTION AND APPEAL RIGHTS

- 3910.1 If the Department proposes to deny, suspend or revoke a license, a written notice shall be provided to the applicant or licensee, which states the proposed action and the basis for the proposed action.
- 3910.2 The notice required under § 3910.1 shall advise the applicant or licensee of the right to request a hearing within ten (10) business days (excluding Saturdays, Sundays, and legal holidays) from the date of the service of the notice.
- 3910.3 The notice shall advise that the action proposed or recommended will be taken at the expiration of ten (10) calendar days after service of the notice unless an appeal is taken.
- 3910.4 The notice shall be:
- (a) Served personally upon the applicant or licensee, or the applicant or licensee's agent; or
 - (b) Sent by first class mail to the home or business address of the applicant or licensee, or the applicant or licensee's agent, appearing on the application or license.
- 3910.5 A notice that is returned by the post office for reason of refusal of the addressee to accept delivery, or incorrect address, is deemed to have been properly served on the addressee by mail.
- 3910.6 An applicant may not file a separate application for licensure under this chapter during the appeal process.

3911. HEARINGS AND APPEAL

- 3911.1 Any licensee on whom a notice has been served pursuant to § 3910 may file a written notice of appeal with the Office of Administrative Hearings (OAH).
- 3911.2 All hearings and appeals shall be conducted pursuant to the regulations promulgated by OAH. Any stay of an OAH decision that results in the revocation of a license shall be issued pursuant to the procedures set forth by OAH.

3999. DEFINITIONS

- 3999.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Director - the Director of the Department of Consumer and Regulatory Affairs.

Construction management – means any work performed by a construction manager.

Construction manager – means any person who, for a fee, is contracted to supervise and coordinate the work of design professionals and multiple general contractors, while

allowing the design professionals and general contractors to control individual operations and the manner of design and construction. Services provided by a construction manager may include:

- (a) coordination, management, or supervision of design or construction;
- (b) cost management, including estimates of construction costs and development of project budgets;
- (c) scheduling for all phases of a project;
- (d) design review, including review of formal design submission and construction feasibility; and
- (e) bid packaging and general contractor selection; provided, that an owner who performs construction management himself or herself for his or her own residential property is not considered to be engaged in construction management for purposes of this chapter.

The term “construction manager” does not include any licensed engineer or architect acting within the scope of his or her license.

General contractor – means any person who, for a fee, is contracted to do construction on real property owned, controlled, or leased by another person of commercial, industrial, institutional, governmental, residential or accessory use buildings or structures. This also includes the remodeling, repair, improvement or demolition of these buildings or structures.

The term “general contractor” shall also include persons engaged in heavy construction (including highway, street, bridge, transmission line, marine facilities, and oil and gas structures construction, and dredging); land development (including blasting, test drilling, landfill, leveling, earthmoving, excavating, land drainage, and other land preparation); and the construction of new buildings.

The term “general contractor” does not include:

- (a) any subcontractor, employee, or agent working for or under the supervision of a general contractor licensed or required to be licensed under this chapter and acting within the scope of his or her contract, employment, or agency;
- (b) any person who merely furnishes materials or supplies for use at a construction site without fabricating them into, or consuming them in the performance of, the work of a general contractor;
- (c) any licensed engineer or architect acting within the scope of his or her license;
- (d) any person who does general contracting work on property that constitutes his or her primary residence, if that primary residence is a single-family dwelling;
- (e) any property owner who does minor nonstructural repairs on the owner’s property; and
- (f) a governmental entity for work upon premises owned by the governmental entity and performed by employees of the governmental entity.

General contracting – means any work that is performed by a general contractor.

The term “general contracting” shall not include work performed by licensed electricians, licensed plumbers and gasfitters, or licensed refrigeration and air conditioning mechanics, so long as the work performed by them is limited to that of their licensed profession.

Pattern of substantial code violations – means five (5) or more violations of the building code which imperil the public health, safety, or welfare, or two (2) or more violations of any stop work order issued pursuant to this code, or any combination thereof involving five (5) or more violations of this code within any six (6) month period, at one (1) or more construction sites within the District managed or controlled by the licensee.

Property owner - any person or person’s authorized agent who enters into a contract for the performance of general contracting work on property owned or occupied by that person.

Payment - the transfer, directly or indirectly, of any valuable consideration, and shall include, but not be limited to, the delivery of cash, promissory note, installment contract, other written promise to pay money, chattel mortgage, or deed of trust; Provided, that the term “payment” shall not include the promise to pay embodied in the contract itself.

Person - includes an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal or agent.

Single contract project – means the total estimated cost of a project being undertaken by a general contractor or construction manager.

Subcontractor – means any person who contracts to perform construction-related services for a general contractor, a construction manager, or another subcontractor.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

The Director of the District Department of the Environment (“DDOE”) in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code 8-151.01 *et seq.*), the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code §§ 34-2202.06a, 34-2202.06b, and 34-2202.16c(d-3)), and Mayor’s Order 6006-61, effective June 14, 2006, hereby gives notice of his intent to convert the current flat stormwater fee for the conveyance of stormwater runoff to a fee that is based on impervious area.

The final rulemaking amends regulations in Title 21, Chapter 5 of the District of Columbia Municipal Regulations (Water Quality and Pollution) to convert the current stormwater fee which is charged as a flat fee to single family residences and as a percentage of water and sewer charges for all other property classes, to a fee that attributes the cost of conveying stormwater runoff to the quantity of stormwater runoff generated from a property by use of impervious area as a surrogate metric. The metric, referred to herein as the Equivalent Residential Unit, or ERU, is defined for billing purposes as 1,000 square feet and is based on a median area of a single family residential property. The conversion will result in a change from the current flat fee (charged to single-family homes) or a volumetric fee (charged according to the amount of potable water consumed by multi-family homes, commercial or government buildings), to a fee based on the amount of impervious area on a given property. Customers (property owners) that use little potable water but have large impervious areas may see stormwater fees increase. Conversely, customers that use larger volumes of potable water but have small impervious areas may see stormwater fees decrease. This conversion will be done in coordination with the Water and Sewer Authority’s (WASA’s) conversion to an impervious area charge (56 D.C. Reg. 001305, February 6, 2009), and will be effective May 1, 2009.

Stormwater fees are required for the District to implement the stormwater management measures required by the municipal separate storm sewer system permit (“MS4 Permit”) issued by the U.S. Environmental Protection Agency (“EPA”) to the District (such as enhanced street cleaning, installation of stormwater controls on roadways, and increased cleaning and maintenance of stormwater drains), and to avoid violations and potential fines. The required stormwater management measures and associated costs are best illustrated by the provisions of the August 2008 MS4 Permit Enhancement Agreement between the District and the U.S. EPA Region III (available on the DDOE website at http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/stormwaterdiv/epa_letter_agreement_august_2008.pdf) and the 2008 Storm Water Management Administration Study conducted for DDOE by RESOLVE, Inc. (available on the DDOE website at <http://ddoe.dc.gov/ddoe/cwp/view,a,1209,q,497549.asp>). Copies of both documents may also be obtained by calling DDOE at (202) 535-2600. Under the 2008 MS4 Permit Enhancement Agreement, there are measurable and quantifiable milestones with specific deadlines.

In December 2008, the Council approved the Comprehensive Stormwater Management Enhancement Amendment Act of 2008 (Bill 17-0980), which requires, inter alia, that the District convert to an impervious area-based stormwater fee, and that the implementation of the fee be coordinated with the implementation of the impervious area surface charge of WASA. A fee based on impervious area (that is, the amount of paved surfaces, roofs, or similarly hardened area on a property) correlates with the amount of stormwater runoff a property generates and the burden placed on stormwater infrastructure and the streams and rivers that receive stormwater. Accordingly, the conversion to an impervious fee will not result in an increase in the revenue raised by the District (approximately \$13 million each year). Rather, it will yield a more accurate and more equitable method of apportioning the city's stormwater management costs than the current fee structure. Additionally, the new fee structure will provide an incentive to property owners to reduce the amount of hardened areas on their properties. A reduction in stormwater runoff should in turn lead to a reduction in stormwater pollutants discharging into the Anacostia and Potomac Rivers via the MS4 stormsewer system.

The rulemaking was published as proposed in the DC Register at 56 DCR 001991 (March 6, 2009). The public presented its views and comments on the proposed impervious stormwater fee at a public hearing on April 13, 2009. The District received one additional set of comments on the stormwater fee conversion. These comments could be grouped into three categories: 1) a number of comments urged DDOE to proceed with development of a stormwater fee credit program, and made specific suggestions for such a program for DDOE's consideration; 2) one comment raised concerns regarding the development of and public notice provided for the proposal; and 3) one comment contended that DDOE lacked the authority necessary to charge a stormwater fee. In response to the first group of comments, DDOE will be developing a stormwater fee credit system in coordination with DC WASA in the coming year, and will welcome and consider stakeholder input as part of that process. In response to the second comment, DDOE has complied with required procedures for providing notice of and advertising the regulatory proposal and public hearing, and has also been open and engaged in a stakeholder process since late 2007 regarding the Department's intent to base the stormwater fees on impervious cover. In response to the third comment, DDOE has sufficient authority to charge a stormwater fee under the District Department Establishment Act of 2005 and the Water and Sewer Authority Establishment and Public Works Reorganization Act of 1996.

The Department has considered the comments, and have determined that no changes will be made to the proposed rules published on March 6, 2009. The comments, the Department's detailed responses, and an audio recording of the hearing will be maintained as part of the official record, and are available for inspection. These may be obtained by calling Jonathan Champion at DDOE at (202) 535-1722. The rulemaking converting the stormwater fees to an impervious area basis shall become effective on May 1, 2009.

Title 21 of the District of Columbia Municipal Regulations, Chapter 5, Section 556 is amended to read as follows:

556 STORMWATER FEES

- 556.1 Effective May 1, 2009, the stormwater fee collected from each District of Columbia retail water and sewer customer shall be based upon the Equivalent Residential Unit (ERU). An ERU is defined as 1,000 square feet of impervious area of real property.
- 556.2 All residential customers shall be assessed one (1) ERU. Residential customers shall include a single-family dwelling used for domestic purposes; a condominium or apartment unit where each unit is served by a separate service line and is individually metered and the unit is used for domestic purposes; or a multifamily structure of less than four apartment units where all the units are served by a single service line that is master metered.
- 556.3 All non-residential customers shall be assessed ERU(s) based upon the total amount of impervious area on each lot. This total amount of impervious area shall be converted into ERU(s), reduced to the nearest 100 square feet. Non-residential customers shall include all customers not within the residential class.
- 556.4 Impervious-only properties are properties that have not, prior to May 1, 2009, had metered water/sewer service and require the creation of new customer accounts for billing of stormwater fees. The DC Water and Sewer Authority, pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Code §§ 34-2202.03(3), (11)), shall establish accounts for and bill these impervious-only properties for stormwater fees pursuant to its regulations in 21 DCMR Chapter 41.
- 556.5 The charge for one Equivalent Residential Unit (ERU) shall be \$2.57 per month. This charge shall become effective May 1, 2009.
- 556.6 A landlord shall not pass a stormwater charge to a tenant that is more than the stormwater charge prescribed by the Director.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA) hereby gives notice of the following amendments to selected provisions of Title 14 of the District of Columbia Municipal Regulations. The DCHA's rulemaking authority is found in the District of Columbia Housing Authority Act of 1999 at D.C. Code, § 6-202. A Notice of Proposed Rulemaking was published in the D.C. Register on February 27, 2009 at 56 DCR 001823.

The amendments are to Chapter 83, Rent and Housing Assistance Payments, Section 8300.1 Fair Market Rents, to add two new subsections 8300.1 (c) and (d). Final action to adopt this rule was taken at the Board of Commissioners regular meeting on April 8, 2009. These final rules will be effective upon publication of this notice in the D.C. Register.

Section 8300.1 Fair Market Rents

(c) In the event HUD sets or reduces the fair market rents applicable to DCHA to less than fair markets rents at the 50th percentile rent as provided in 8300.1 (b) above, and such reduction in the fair market rents at the 50th percentile rents will either result in a decrease in the range of housing opportunities throughout the District and an increase in concentration of poverty among participants receiving rental assistance in the Housing Choice Voucher Program, or will hinder DCHA's efforts to deconcentrate poverty among participants receiving rental assistance in the Housing Choice Voucher Program, DCHA may submit to the DCHA Board of Commissioners a written justification for maintaining a payment standard based on fair market rents at the 50th percentile rents as provided in 8300.1(b) above.

(d) If DCHA submits a written justification for maintaining a payment standard based on fair market rents at the 50th percentile rents as identified in 8300.1 (c) above, DCHA shall submit a resolution for adoption by the DCHA Board of Commissioners, of a payment standard schedule based on fair market rents set at the 50th percentile fair market rents in accordance with Section 8300.3 below.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA) hereby gives notice of the following amendments to selected provisions of Title 14 of the District of Columbia Municipal Regulations. The DCHA's rulemaking authority is found in the District of Columbia Housing Authority Act of 1999 at D.C. Code, § 6-202. A Notice of Proposed Rulemaking was published in the D.C. Register on February 20, 2009 at 56 DCR 001731.

The amendments are to Chapter 83, Rent and Housing Assistance Payments, Section 8301.3 Fair Market Rents, Reasonable Rent Determination. Final action to adopt this rule was taken at the Board of Commissioners regular meeting on April 8, 2009. These final rules will be effective upon publication of this notice in the D.C. Register.

Section 8301.3 Reasonable Rent Determination: The reasonable rent determination shall be determined based on the methodology described below in this Section 8301.3. At any time a rent determination is undertaken in accordance with 8301.2 above, the following process is used for determining whether the gross rent proposed to be charged by the Owner is reasonable.

- (a) DCHA when determining reasonable rent always considers items (i) through (ix) and may consider items (x) and (xi) at its option as follows: square feet, number of bedrooms, maintenance services provided under the lease, location, unit type, quality, date built, amenities included in the lease, utilities if provided by Owner, number of bathrooms, other services provided under the lease.
- (b) DCHA maintains an automated database which includes data on rents of comparable unassisted units in the same sub-market or a contiguous sub-market for use by DCHA staff in making rent reasonableness determinations.
- (c) DCHA staff shall determine the average rent within each sub-market, based on the data collected during rent reasonableness determinations.
- (d) DCHA shall conduct an annual District-wide evaluation to determine the average contract rents for all unit sizes and/or types in each sub-market.
- (e) The District-wide evaluation shall be done in accordance with the rent reasonableness factors set forth in 8301.3(a) to determine reasonable contract rents.
- (f) The results of the District-wide evaluation shall be made available to all HCVP landlords and participants.
- (g) The results shall set forth the allowable contract rents for all unit sizes and/or types in each sub-market of the District of Columbia.

- (h) DCHA shall monitor the rental market in the District of Columbia and if the market changes by ten percent (10%) or more, DCHA shall conduct a mid-year evaluation for certain sub-markets.
- (i) DCHA shall make available such mid-year evaluations to all HCVP landlords and participants.
- (j) HCVP landlords shall be able to submit to the DCHA rents for comparable unassisted units for consideration by the DCHA.
- (k) Any units submitted by a HCVP landlord for consideration by the HCVP shall meet the criteria of the unit size and/or type within the sub-market or a contiguous sub-market; provided however, DCHA's determination of the sub-market rent shall be final.
- (l) DCHA does not establish minimum base rent amounts.
- (m) DCHA shall use at least two comparable market rents for unassisted units for each rent determination with all comparables based on the rent that the unit would command if leased in the current market within the last twelve (12) months.
- (n) The data for other unassisted units may be gathered from newspapers, realtors, professional associations, inquiries of owners, market surveys, and other available sources.
- (o) The market areas for rent reasonableness are indicated by sub-markets, within the District of Columbia and the determination of reasonable rent is made by comparable rents on similar units within the same or nearby sub-market.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 08-05
Z.C. Case No. 08-05
(Text Amendment - 11 DCMR)
(Amendments to DD Zoning Regulations to Facilitate Construction
of the Convention Center Hotel)
October 20, 2008

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission ("NCP") for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to §§ 1700.7, 1706.11, and 2405.3 of the Zoning Regulations (Title 11 DCMR).

The text amendments will facilitate construction of the planned convention center headquarters hotel at Square 370 by removing the residential use requirement of the DD Regulations, and allowing additional density above the Planned Unit Development standard for that use of this property without the applicant having to meet the otherwise applicable standard or to purchase transferrable development rights.

A Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on September 19, 2008, at 55 DCR 9871. The Commission took final action to adopt the amendments at a public meeting on October 30, 2008, without making changes to the proposed text. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The site for the proposed convention center hotel is split-zoned DD/C-2-C and DD/C-3-C and is located in the Housing Priority Area of the Downtown Development ("DD") overlay. The DD overlay establishes minimum residential use requirements for properties located in a housing priority area of at least 4.5 floor area ratio ("FAR") in the DD/C-2-C, and 3.5 FAR in the DD/C-3-C Zone District. Such properties are also granted a matter-of-right density of 8.0 FAR and 9.5 FAR, respectively. A hotel is considered a non-residential use in the DD, so in order for this project to be a completely non-residential building, it would have to engage in a combined lot development pursuant to § 1708. It could also obtain an addition .5 FAR of non-residential density through buying transferrable development rights.

Subparagraphs (b) and (c) of § 1700.7 disallow the use of the Planned Unit Development process to reduce the housing requirement, and requires a PUD applicant to demonstrate that it purchased transferable development rights to the maximum feasible extent prior to obtaining additional FAR through a PUD. Although § 2405.3 of the PUD regulation permit the Commission to grant an addition 5% FAR above the PUD standard, an applicant must show the additional density is

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“essential to the successful functioning of the project.”

Description of Text Amendment

The amendments remove the residential use requirement from any portion of Square 370 improved with a convention center headquarters hotel. Because the property remains in the Housing Priority Area, it will continue to be able to achieve the full matter-of-right FAR allowed, all of which may be used for a convention center headquarters hotel use. This will avoid the need for the developer to engage in a costly combined lot development transaction. Should this amount of non-residential FAR prove insufficient, the proposed rules would allow the Commission, as part of a PUD proceeding, to increase the maximum FAR by up to 5% without the Applicant having to meet the otherwise applicable standard or purchasing transferrable development rights

Relationship to the Comprehensive Plan

The amendments would not be inconsistent with the District Elements of the Comprehensive Plan for the National Capital: (“Comprehensive Plan”), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300), and are specifically consistent with the following policies and recommended action of the Comprehensive Plan:

- **Policy CW-1.1.10: Central Washington Hotels and Hospitality Services**

Encourage the development of additional hotels in Central Washington, especially in the areas around the new Convention Center and Gallery Place, along Pennsylvania Avenue NW and Massachusetts Avenue NW, in the Thomas Circle area, and in the area east of Third Street NW. A range of hotel types, including moderately priced hotels, and hotels oriented to family travelers as well as business travelers, should be encouraged. Hotels generate jobs for District residents and revenues for the general fund and should be granted incentives when necessary. Retain existing hotel uses by allowing and encouraging the expansion of those uses, including the addition of one floor, approximately 16 feet in height subject to coordination with federal security needs, to the Hay-Adams Hotel. (10 DCMR §1708.11.) (emphasis added).

- **Policy CW-2.4 Mount Vernon District**

Mount Vernon Square itself was designed to be a focal point in Washington’s ensemble of great civic landmarks. Its focus is the 1902 former Carnegie Library building, an elegant historic structure that is now in use by the Washington Historical Society. Facing the north edge of the Square is the 2.3 million square foot Washington Convention Center, completed in 2003. To the southwest, the now vacant site of the former Convention Center is awaiting redevelopment. Immediately northwest of the Square, a major convention hotel is planned. Large-scale office buildings occupy other sides of the Square, framing it as a potentially great public space. (10 DCMR § 1714.2.) (emphasis added).

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- **Policy CW-2.4.3: Convention Center Area Land Uses**

Encourage land uses around Mount Vernon Square which capitalize on the presence of the Washington Convention Center. Such uses include hotels, restaurants, retail, and entertainment uses. Convention related hotel construction should be focused on vacant or underutilized land immediately adjacent to the Convention Center to minimize impacts on the surrounding neighborhood. (10 DCMR § 1714.8.) (emphasis added).

- **Action CW-2.4-B: Convention Center Hotel**

Develop a major convention center hotel in close proximity to the Washington Convention Center. The hotel should be sited and designed to complement adjacent uses and add activity and aesthetic value to the Mount Vernon Square neighborhood. (10 DCMR §1714.14.)

The Comprehensive Plan Generalized Land Use Map identifies the site for a mix of high-density residential and commercial uses.

Setdown Proceeding

OP initiated this rulemaking proceeding by filing a report dated March 14, 2008. The Commission setdown the case at its April 14, 2008 regular public meeting.

Public hearing

The Commission held a properly noticed public hearing on July 14, 2008.

OP testified in support of the text amendments.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's written recommendation. No written recommendation was submitted by an affected ANC in this case.

Proposed Action

The Commission took proposed action at the conclusion of the July 14, 2008 hearing.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on September 19, 2008 at 55 DCR 9871, for a 30-day notice and comment period.

No comments were received.

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The proposed rulemaking was referred to NCPC under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated August 29, 2008, found that the proposed text amendments would not adversely affect the identified federal interests, not be inconsistent with the Comprehensive Plan for the National Capital.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

At its properly noticed October 20, 2008 public meeting, the Commission took final action to approve the proposed text amendments.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to §§ 1700.7, 1706.11, and 2405.3 of the Zoning Regulations, Title 11 DCMR (new text is shown **bolded** and underlined, deleted text is shown in strike-through text):

A. Chapter 17, DOWNTOWN DEVELOPMENT OVERLAY DISTRICT, is amended as follows:

1. By amending § 1700, General Provisions, § 1700.7, to read as follows:

1700.7 A Planned Unit Development (PUD) in the DD Overlay District shall be subject to the following provisions in addition to those of chapter 24 of this title:

...

- (d) Notwithstanding paragraphs (b) and (c) of this subsection, if a PUD is proposed to govern **the following, the PUD shall be guided by the applicable policies of the Comprehensive Plan pertaining to the development of:** ~~development of the University of the District of Columbia campus and other uses in Squares 401, 402, 425, and 426, the PUD shall be guided by the applicable policies of the Comprehensive Plan.~~

- 1) The University of the District of Columbia campus and other uses in Squares 401, 402, 425, and 426, and**
- 2) A convention center headquarters hotel on square 370.**

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2. By amending Section 1706, Residential and Mixed Use Development, § 1706.11 to read as follows:

1706.11 No minimum residential use requirement shall apply to the following: ~~in Square 485 nor to any lot or lots in Square 455 or the southern part of Square 454 improved with a sports arena.~~

(a) Square 485;

(b) Any lot or lots in Square 455 or the southern part of Square 454 improved with a sports arena; and

(c) Any portion of Square 370 improved with a convention center headquarters hotel.

- B. Chapter 24, PLANNED UNIT DEVELOPMENT PROCEDURES, Section 2405 PUD Standards, § 2405.3, is amended to read as follows:

2405.3 The Commission may authorize the following ~~an increase~~ increases; provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter, or with respect to FAR, is for the purpose of a convention headquarters hotel on square 370; ~~of not more than five percent (5%) in the maximum height or floor area ratio provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter.~~

(a) not more than five percent (5%) in the maximum height; or

(b) not more than five percent (5%) in the maximum floor area ratio.

On July 24, 2008, upon motion of Vice Chairman Jeffries, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at the end of the hearing on this case by a vote of **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis J. Etherly, Jr., Peter G. May, and Michael G. Turnbull).

On October 20, 2008, upon motion of Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; Curtis J. Etherly, Jr., not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on _____.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND**

Z.C. ORDER NO. 08-16/08-16A

Z.C. Case Nos. 08-16 and 08-16A

(Text Amendment - 11 DCMR)

**(Text Amendments to Modify Definitions of Child Development Home and Child
Development Center)
February 9, 2009**

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to the definitions of "Child development home" and "Child/Elderly development center" in § 199 of the Zoning Regulations, (Title 11 District of Columbia Municipal Regulations ("DCMR")).

The proposed text amendments modify the definitions of "Child development home" and "Child/Elderly development center" to make the zoning definitions consistent with the definitions found in the regulations governing the licensure and inspection of these facilities found in Title 29 of the DCMR, Chapter 3.

A Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on December 26, 2008, at 55 DCR 12965. No comments were received and no changes were made to the text of the proposed amendments.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The Zoning Regulations currently define "Child development home" as:

Child development home - a dwelling unit used in part for the licensed care, education, or training of no more than five (5) individuals fifteen (15) years of age or less. Those individuals receiving care, education, or training who are not related by blood, marriage, or adoption to the caregiver shall be present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as a child care center, day-care center, pre-school, nursery school, before-and-after school programs, and similar programs and facilities.

The Zoning Regulations currently define "Child/Elderly development center" as:

Child/Elderly development center - a building or part of a building, other than a child development home or elderly day care home, used for the non-residential licensed care,

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education, counseling, or training of individuals two (2) years old or older but under the age of fifteen (15) years of age and/or for the non-residential care of individuals age 65 or older, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. A child/elderly development center includes the following accessory uses: counseling, education, training, and health and social services for the person or persons with legal charge of individuals attending the center, including, but not limited to, any parent, spouse, sibling, child, or legal guardian of such individuals.

Description of Text Amendments

The amendments change the definition of “Child development home” by increasing the maximum number of individuals permitted in the dwelling unit from five (5) to six (6).

The amendments change the definition of “Child/Elderly development center” by increasing the maximum number of individuals permitted in the facility from six (6) to seven (7), and by deleting the requirement that the individuals be over the age of two (2) years old.

Relationship to the Comprehensive Plan

The amendments would not be inconsistent with the Comprehensive Plan.

Set Down Proceeding

The Office of Planning (“OP”) initiated this rulemaking case by filing a report dated May 30, 2008, requesting amendments the definitions of Child development home and Child/Elderly development center to increase the maximum number of individuals permitted in the home or facility by one individual. The report stated the amendments harmonize the definitions found in the Zoning Regulations consistent with the substantive regulations governing child development facilities found in chapter 3 of DCMR Title 29, which had been recently changed. The Commission set down the case for a public hearing at its June 9, 2008 public meeting and assigned the matter case number 08-16.

OP then submitted a second report dated July 18, 2008, suggesting an additional change to the definition of Child/Elderly development center, eliminating the minimum age requirement. The report stated the reason for this additional change was to fully harmonize the regulations, and the additional change was inadvertently left out of the original OP report. At a properly noticed special public meeting the Commission set the matter down for a public hearing, assigned it case number 08-16A, and suggested consolidating the hearings for the convenience of interested persons.

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Public Hearing and Proposed Action

The Commission held a public hearing on October 2, 2008. OP testified in favor of the amendments.

The Commission took proposed action to approve the amendments at the conclusion of the public hearing.

As noted, a Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on December 26, 2008, at 55 DCR 12965.

No comments were received.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, through two delegated actions, both dated November 25, 2008, found that the proposed text amendments would not adversely affect the identified federal interests, not be inconsistent with the Comprehensive Plan for the National Capital.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns raised in the affected ANC's written recommendation. No ANC comments were received.

Final Action

At its properly noticed February 9, 2009 public meeting, the Commission took final action to approve the proposed text amendments.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to § 199 of the Zoning Regulations, Title 11 DCMR.

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 08-16/08-16A

Z.C. CASE NOS. 08-16 & 08-16A

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CHAPTER 1, THE ZONING REGULATIONS, § 199 Definitions, is amended by modifying the definitions of Child development home and Child/Elderly development center as follows (new text is shown bolded and underlined, deleted language is shown in strikethrough text):

Child development home - a dwelling unit used in part for the licensed care, education, or training of no more than ~~five (5)~~ **six (6)** individuals fifteen (15) years of age or less. Those individuals receiving care, education, or training who are not related by blood, marriage, or adoption to the caregiver shall be present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as a child care center, day-care center, pre-school, nursery school, before-and-after school programs, and similar programs and facilities.

Child/Elderly development center - a building or part of a building, other than a child development home or elderly day care home, used for the non-residential licensed care, education, counseling, or training of individuals ~~two (2) years old or older but~~ under the age of fifteen (15) years of age and/or for the non-residential care of individuals age 65 or older, totaling ~~six (6)~~ **seven (7)** or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. A child/elderly development center includes the following accessory uses: counseling, education, training, and health and social services for the person or persons with legal charge of individuals attending the center, including, but not limited to, any parent, spouse, sibling, child, or legal guardian of such individuals.

On October 30, 2008, upon motion of Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** the petitions at the end of the hearings on these cases by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; third Mayoral appointee position vacant at the time of the hearing, not voting).

On February 9, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries, not present, not voting; third Mayoral appointee position vacant at the time of the hearing, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on _____.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND**

Z.C. ORDER NO. 08-23

Z.C. Case No. 08-23

(Text Amendment - 11 DCMR)

**(Text Amendments to §§ 1706.2 and 1706.8(b) to remove Square 374 from Housing
Priority Area B)
February 23, 2009**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to §§ 1706.2 and 1706.8(b) of the Zoning Regulations (Title 11 DCMR).

The first amendment removes the property known as Square 374, Lot 44 from the Downtown Development District Housing Priority Area. Lot 44 is part of the former site of the Washington Convention Center, which was located on approximately 10 acres bounded by New York Avenue, and H, 9th, and 11th Streets, N.W. As a result of the amendment, Lot 44 will not have to provide on-site or account off-site for at least 3.5 FAR of residential uses, but its matter-of-right development will be reduced to 6.5 FAR.

The Zoning Regulations do not expressly identify which lots are included within the Housing Priority Area, but cross-reference a map that does. This map, known as Map B, is incorporated into the Zoning Regulations by § 1706.2. Therefore, that subsection is amended to refer to an updated version of Map B that no longer depicts Lot 44 as being within the boundary of the Housing Priority Area.

The second amendment is a purely technical change to § 1706.8 (b). That provision lists the squares or portions of squares (but not the lots) included within Housing Priority Area, Subarea B. The amendment strikes the references to Squares 344 and 373, which are now part of Square 374.

The Office of Planning (“OP”) initiated this rulemaking by filing a report dated July 3, 2008. The Zoning Commission set down the case for a public hearing at its July 14, 2008 public meeting.

The Commission held a public hearing on October 2, 2008. OP testified in support of the petition.

The amendments are not inconsistent with the Comprehensive Plan.

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The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns raised in the written recommendation of an affected Advisory Neighborhood Commission (“ANC”). No ANC submitted a written recommendation in this case.

The Commission took proposed action at the conclusion of the hearing held on October 30, 2008.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on January 16, 2009, at 56 DCR 622. No comments were received.

The proposed rulemaking was referred to the National Capital Planning Commission (“NCPC”) under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated November 25, 2008, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

The Commission took final action to adopt the amendments at a public meeting on February 23, 2009. No changes were made to the proposed text.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to §§ 1706.2 and 1706.8(b) of the Zoning Regulations, Title 11 DCMR.

Title 11 DCMR, Chapter 17, DOWNTOWN DEVELOPMENT OVERLAY DISTRICT, § 1706 is amended as follows (deleted text is shown with ~~striketrough~~, new text is shown as **bolded** and underlined):

1. Subsection 1706.2 is amended to read as follows:

1706.2 The housing requirements and incentives of this section shall be applicable only in the Housing Priority Area that is depicted in Map B ~~attached~~ **included as information supplemental** to the Office of Planning memorandum dated ~~June 7, 2006~~ **July 3, 2008** filed in Zoning Commission Case No. ~~05-43~~ **08-23**, which may be viewed in the Office of Zoning, and that is described by squares in § 1706.8, provided that the transferable development rights provisions of §

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1706.3 shall be applicable throughout the DD Overlay District. Map B is incorporated by reference.

2. Paragraph 1706.8 (b) is amended to read as follows:

1706.8 For the purposes of permitting and governing combined lot developments as provided by § 1708, the Housing Priority Area is divided into three (3) subareas as follows:

- (b) Housing Priority Area B, the Mount Vernon Square South area, comprises the DD/C-2-C and DD/C-3-C zoned properties that are located south of Massachusetts Avenue, including squares and parts of squares numbered 247, 283, 284, 316, 317, 342, 343, ~~344~~, 371, 372, ~~373~~, 374, 427, 428, 452, 453, 485, 486, 517, and 529, National Park Service Reservation 174, and the commercial and underdeveloped properties in square 247 with an approved plan unit development on or before January 18, 1991, for so long as the planned unit development approval remains valid;

On October 23, 2009, upon motion of Vice Chairman Jeffries, as seconded by Commissioner May, the Zoning Commission **APPROVED** the petition at the end of the hearing on this case by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G' Turnbull to approve; the third Mayoral appointee position vacant, not voting).

On February 23, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to adopt; William W. Keating, III, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on _____.